

Introduction to Due Process

The concept of Due Process of Law is deeply ingrained in our social and legal construct as a people, with a history going back before Magna Carta. The term “due process of law” is clearly used in the 5th and 14th amendments. Due process is meant to establish Fundamental Fairness in our proceedings when we as a society alter or restrict an individual’s right to life, liberty or property. How we proceed is found in various laws, codes and regulations and tempers the question of why and when we should proceed.

People, who have intellectual, physical, social, and related disabilities, unless otherwise determined by the court, enjoy full citizenship and are to be treated as such. When any person, group, organization or agency attempts restrict the rights of any other person or persons a strict adherence to the principles of Fundamental Fairness and Due Process is required.

It is the ultimate responsibility of the Human Rights Committee and each of its members to insure that people are supported, their rights are protected and that people are afforded due process when service providers purpose to restrict those rights. Specifically, the guiding tenet is that due process is required whenever agency actions limit individual action. This guide references Federal and State law and SCDDSN policies and procedure relating to rights of all citizens and specificity rights of persons with disabilities.

Steps to Due Process for HRC

ALWAYS ASK!

1. Has the person been invited and supported to attend the meeting?
If no, do not hear the case.
If yes, where is the person?
If not in attendance, why?
If the person chose not to attend, proceed, however, except by personal choice, not the provider, there must be a compelling reason for them not to attend. Routine programs, staffing, transportation, other appointments, home visits, etc. are not acceptable reasons.
2. What is the reason for the case?
There must be a compelling reason/triggering events prompting the provider to purpose to restrict or limit any right or everyday personal freedoms of a service user. (Note: routine health care, medication, treatments and office visits absent of sedation or physical restraint do not fall into this category and need not be presented to the committee.)
3. What is the purposed intervention or action?
4. Is this action a restriction of privacy, access, movement, association, finances, or restrictive or invasive health care etc.?
5. What has been done before this point, alternatives, etc?
6. What makes the intervention least restrictive?

7. Is the intervention time limited?
8. What will be done to actively and positively restore the person's right/remove this intervention?
9. Has or when will staff be trained to implement this intervention?
10. How does the intervention affect others, housemates or coworkers?
11. Has the person given their informed consent? Yes or no?
 - A. If yes, what procedures were followed?
 - B. Was the person informed of their right to refuse?
 - C. If the person did not consent, why?
 - D. Was the person informed of their right to present their case to the committee and supported to attend the meeting?
12. If 1 through 11 can be adequately answered and has been documented by the agency, proceed.
13. If not, no further action is to be taken and the case is to be tabled.
14. In all cases the committee must deliberate:
 - A. Risk vs. benefit of the restriction/intervention to the person.
 - B. If need be the person's refusal vs. less restrictive alternatives.
 - C. The actual risk to the agency vs. the obligation to protect (DDSN 510-01-DD).
(Note: the risk to the agency can not to be used as a reason not to support a person to achieve the desired outcome, i.e. not enough staff, time, etc. This point is meant to provide the committee with a way to insure that the agency has used the directive to explore the least restrictive alternative in cases involving questions of supervision of the person.)
15. The committee will decide,
 - a. to approve the proposed program/intervention
 - b. to support the person's refusal
 - c. to return the program to the agency for revision.
16. The committee chair will notify the service user and the agency head in writing of its decision.

Conduct of an HRC meeting, the basics:

1. The meeting is conducted by the committee chair or his designee not provider staff or consultants.
2. The committee is a stand alone advisory group separate from the agency. All deliberations will proceed under a principle of neutrality.
3. Committee decisions are made by vote.
4. Only committee members may vote, not provider staff or consultants.
5. Committee members whose vote may represent a conflict of interest in a case must excuse themselves from voting.
6. Staff or consultants not associated with the case in presentation are to be excused from the room. This does not apply to the ED as the Committee serves to advise the ED, however the ED may not participate in Committee deliberations except to offer information and may not vote.
7. The service user may request that any provider staff, to include the ED, not be in the room during presentation of their case and/or while they are making their refusal or appeal. The service user must be informed of this right before case presentation begins.